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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 KENNETH PATTON,

11 Plaintiff,

12 v.

13 JAMES COX, *et al.*,

14 Defendants.  
15  
16

Case No. 2:14-cv-00519-LDG (PAL)

**ORDER**

17 The plaintiff, Kenneth Patton, brought this suit pursuant to 42 U.S.C. §1983, against  
18 defendant Ira Hollingsworth, alleging claims for excessive force and retaliation. The  
19 defendant moves for summary judgment (#37) arguing, *inter alia*, that plaintiff's claims are  
20 untimely and barred by the statute of limitations. Patton opposes the motion. Having  
21 reviewed the papers, pleadings, and arguments of the parties, the Court agrees that the  
22 plaintiff's claims are barred by the statute of limitations.  
23

24 Motion for Summary Judgment

25 In considering a motion for summary judgment, the court performs "the threshold  
26 inquiry of determining whether there is the need for a trial—whether, in other words, there

1 are any genuine factual issues that properly can be resolved only by a finder of fact  
2 because they may reasonably be resolved in favor of either party.” *Anderson v. Liberty*  
3 *Lobby, Inc.*, 477 U.S. 242, 250 (1986); *United States v. Arango*, 670 F.3d 988, 992 (9th Cir.  
4 2012). To succeed on a motion for summary judgment, the moving party must show (1)  
5 the lack of a genuine issue of any material fact, and (2) that the court may grant judgment  
6 as a matter of law. Fed. R. Civ. Pro. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322  
7 (1986); *Arango*, 670 F.3d at 992.

8 A material fact is one required to prove a basic element of a claim. *Anderson*, 477  
9 U.S. at 248. The failure to show a fact essential to one element, however, “necessarily  
10 renders all other facts immaterial.” *Celotex*, 477 U.S. at 323. Additionally, “[t]he mere  
11 existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient.”  
12 *United States v. \$133,420.00 in U.S. Currency*, 672 F.3d 629, 638 (9th Cir. 2012) (quoting  
13 *Anderson*, 477 U.S. at 252).

14 “[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after  
15 adequate time for discovery and upon motion, against a party who fails to make a showing  
16 sufficient to establish the existence of an element essential to that party’s case, and on  
17 which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322. “Of  
18 course, a party seeking summary judgment always bears the initial responsibility of  
19 informing the district court of the basis for its motion, and identifying those portions of ‘the  
20 pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
21 affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material  
22 fact.” *Id.*, at 323. As such, when the non-moving party bears the initial burden of proving,  
23 at trial, the claim or defense that the motion for summary judgment places in issue, the  
24 moving party can meet its initial burden on summary judgment “by ‘showing’—that is,  
25 pointing out to the district court—that there is an absence of evidence to support the  
26 nonmoving party’s case.” *Id.*, at 325. Conversely, when the burden of proof at trial rests

1 on the party moving for summary judgment, then in moving for summary judgment the  
2 party must establish each element of its case.

3       Once the moving party meets its initial burden on summary judgment, the non-  
4 moving party must submit facts showing a genuine issue of material fact. Fed. R. Civ. Pro.  
5 56(e); *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1103 (9th Cir.  
6 2000). As summary judgment allows a court "to isolate and dispose of factually  
7 unsupported claims or defenses," *Celotex*, 477 U.S. at 323-24, the court construes the  
8 evidence before it "in the light most favorable to the opposing party." *Adickes v. S. H.*  
9 *Kress & Co.*, 398 U.S. 144, 157 (1970). The allegations or denials of a pleading, however,  
10 will not defeat a well-founded motion. Fed. R. Civ. Pro. 56(e); *Matsushita Elec. Indus. Co.*  
11 *v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). That is, the opposing party cannot  
12 "rest upon the mere allegations or denials of [its] pleading' but must instead produce  
13 evidence that 'sets forth specific facts showing that there is a genuine issue for trial.'" *Estate of Tucker v. Interscope Records*, 515 F.3d 1019, 1030 (9th Cir. 2008) (quoting Fed.  
14 R. Civ. Pro. 56(e)).  
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#### 16 17 Statute of Limitations

18       Title 42 U.S.C. § 1983 does not contain its own statute of limitations. Thus, federal  
19 courts apply the most suitable statute of limitations of the state in which the claim arises for  
20 42 U.S.C. § 1983 claims. *Board of Regents v. Tomanio*, 446 U.S. 478, 483-84 (1980);  
21 *Donoghue v. County of Orange*, 848 F.2d 926, 930 (9th Cir. 1987).

22       To identify the limitations period that the court must apply, the court characterizes  
23 §1983 claims as personal injury actions. *Wilson v. Garcia*, 471 U.S. 261, 276 (1985). The  
24 court then looks to and applies the state's general or residual personal injury statute of  
25 limitations. *Owens v. Okure*, 488 U.S. 235, 251 (1989). In Nevada, the residual statute of  
26 limitations for personal injury actions is two years from the date the cause of action

1 accrues. Nev. Rev. Stat. § 11.190(4)(e); *Perez v. Seevers*, 869 F.2d 425, 426 (9th Cir.),  
2 *cert. denied*, 493 U.S. 860 (1989).

3 Although the court must apply the state's limitations period, it must decide when a  
4 §1983 claim accrues under federal law. *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758,  
5 760 (9th Cir. 1991), *cert. denied*, 112 S.Ct. 1161 (1992) "The general federal rule is that a  
6 limitations period begins to run when the plaintiff knows or has reason to know of the injury  
7 which is the basis of the action." *Trotter v. International Longshoremen's Union, Local 13*,  
8 704 F.2d 1141, 1143 (9th Cir. 1983). A plaintiff may recover only for the causes of action  
9 he has specifically alleged to have accrued within the appropriate limitations period.  
10 *Gibson v. United States*, 781 F.2d 1334, 1340 (9th Cir. 1986), *cert. denied*, 479 U.S. 1054  
11 (1987).

12 A plaintiff starts a civil action when he or she files the complaint with the court. Fed.  
13 R. Civ. Pro. 3 "When papers are mailed to the clerk's office, filing is complete when the  
14 papers are received by the clerk." *Cooper v. City of Ashland*, 871 F.2d 104, 105 (9th Cir.  
15 1989).

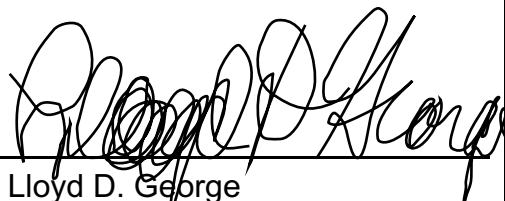
16 The plaintiff has alleged that he was subjected to an excessive use of force by  
17 defendant in February 2011, and that after he filed a grievance regarding the event, he was  
18 subjected to false disciplinary charges in March 2011. The plaintiff filed his complaint in  
19 state court in February 2014, nearly a full year after Nevada's two-year limitations period  
20 had expired. Therefore, the plaintiff's claims are barred by the statute of limitations as  
21 untimely.

22 Accordingly,

23 THE COURT **ORDERS** that Defendant's Motion for Summary Judgment (#37) is  
24 GRANTED; The Plaintiff's claims against the defendant are DISMISSED with prejudice.

1 THE COURT FURTHER **ORDERS** that Plaintiff's Motion for Defendant's to Send  
2 Medical Records re: Motion for Summary Judgment (#41) is DENIED as moot.

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4 DATED this 11 day of March, 2016.

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7 Lloyd D. George  
8 United States District Judge  
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